



STATE OF NEW YORK

UNEMPLOYMENT INSURANCE APPEAL BOARD

PO Box 15126

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DECISION OF THE BOARD

Mailed and Filed: SEPTEMBER 02, 2022

IN THE MATTER OF:

Appeal Board No. 622828

PRESENT: GERALDINE A. REILLY, MEMBER

The Department of Labor issued the initial determinations disqualifying the claimant from receiving benefits, effective September 29, 2021, on the basis that the claimant voluntarily separated from employment without good cause; and, in the alternative, on the basis that the claimant lost employment through misconduct in connection with that employment and holding that the wages paid to the claimant by prior to September 29, 2021 cannot be used toward the establishment of a claim for benefits. The claimant requested a hearing.

The Administrative Law Judge held a telephone conference hearing at which all parties were accorded a full opportunity to be heard and at which testimony was taken. There were appearances by the claimant and on behalf of the employer. By decision filed April 4, 2022 (), the Administrative Law Judge overruled the initial determination of voluntarily leaving of employment without good cause and sustained the initial determination of misconduct.

The claimant appealed the Judge's decision to the Appeal Board, insofar as it sustained the initial determination of misconduct. The Appeal Board, on its motion pursuant to Labor Law § 620 (3), has reopened and reconsidered the

Judge's decision, insofar as it overruled the initial determination of voluntarily leaving of employment without good cause.

Based on the record and testimony in this case, the Board makes the following

FINDINGS OF FACT: The claimant was employed as an office manager by the employer, a residential real estate management business, from June 11, 2018 through September 29, 2021. She worked in an office with four to nine other employees and sometimes had contact with tenants or vendors.

On August 6, 2021, the employer notified all employees that it was implementing a COVID-19 vaccination policy as a requirement of continued employment to safeguard its employees and tenants.

On August 18, the claimant, who is Catholic, told the employer that she was not going to get vaccinated because of her religious beliefs. The employer told the claimant that it would not grant a religious exemption, that it would be implementing the policy and that her replacement would be hired.

On August 30, the employer informed the claimant that it had hired her replacement and it would pay her for four more weeks of work in addition to a bonus. The claimant worked through September 29, 2021; and she was paid her bonus. The employer ended the claimant's employment because she did not receive the COVID-19 vaccine and her employment would have continued if she had received the vaccine.

OPINION: The credible evidence establishes that the claimant's employment ended on September 29, 2021, because she refused to receive the COVID-19 vaccine which was a condition of continued employment. The claimant was aware of this requirement and that she could not continue her employment if she did not receive the vaccine. The claimant acknowledged she could have continued in her employment if she had been vaccinated as required. The claimant's contention that her religion beliefs prevented her from complying with the employer's requirement is not persuasive. The Supreme Court has held that such right is subject to a compelling interest test (*Sherbert v. Verner*, 374 U.S. 398 [1963]). In *Sherbert*, the Supreme Court held that unemployment benefits could not be denied to a claimant for refusing to accept work that required him to work on Saturday in violation of his religious beliefs unless such action is justified by a compelling governmental interest (emphasis added). In the case at hand, the employer's policy was intended to further a compelling governmental interest to combat the virus and protect the health and safety of its employees and tenants, and therefore, is justified and reasonable.

We also note that the Supreme Court of the United States has held that "... an

individual's religious beliefs [do not] excuse him from compliance with an otherwise valid law prohibiting conduct that the State is free to regulate" (see *Employment Div. v. Smith*, 494 U.S. 872, 879 [1990]). The Court determined that provided a law is neutral and not aimed at a specific religion, is generally applicable, and pertains to an area of law the government has the ability to regulate, it cannot be preempted by a religious practice. Given the neutrality of the requirement, it is not discriminatory for the employer to enforce a general health requirement on employees.

The claimant could have preserved her employment by complying with the employer's requirement. Her choice not to do so was a voluntary act that brought about her separation from employment. We find further that the claimant has failed to establish a compelling reason for her failure to comply with the employer's reasonable directive. Accordingly, we find that the claimant voluntarily separated from her employment without good cause for unemployment insurance purposes, and we conclude that she was separated from employment under disqualifying circumstances. In light of our decision that the claimant is disqualified on the basis that she voluntarily separated from employment without good cause, there is no need to rule on the alternate determination of misconduct.

DECISION: The decision of the Administrative Law Judge is modified as follows and, as so modified, is affirmed.

The initial determination, disqualifying the claimant from receiving benefits, effective September 29, 2021, on the basis that the claimant lost employment through misconduct in connection with that employment and holding that the wages paid to the claimant by prior to September 29, 2021 cannot be used toward the establishment of a claim for benefits, is moot.

The initial determination, disqualifying the claimant from receiving benefits, effective September 29, 2021, on the basis that the claimant voluntarily separated from employment without good cause, is sustained.

The claimant is denied benefits with respect to the issues decided herein.

GERALDINE A. REILLY, MEMBER